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No. 81-36

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

PETER S. CARBONE, ET AL.,
Petitioner,

v.

ROBERT W. MESERVE, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Under the Railway Labor Act, disputes over whether action taken by a railroad is permissible under an existing collective bargaining contract fall within the exclusive jurisdiction of Railroad Adjustment Boards unless the railroad's contractual justification is simply "frivolous." The question presented is:

Whether, as the court of appeals held, the railroad's interpretation of its collective bargaining agreement with the union to allow a certain change in crew dispatching procedures is not frivolous.

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OPINIONS BELOW

The first, oral opinion of the district court is not reported. The supplemental opinion of the district court (Pet. App. 9a-16a) is not reported. The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 645 F.2d 96.

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* Respondents are the trustees in bankruptcy of the Boston and Maine Corporation, which has no parents or subsidiaries but which has three affiliates, *i.e.*, the Northern Railroad, the Stony Brook Railroad Corp., and the Vermont and Massachusetts Railroad Co.

JURISDICTION

The judgment of the court of appeals was entered on April 10, 1981. The petition was filed on July 8, 1981. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

Sections 2 Seventh and 6 of the Railway Labor Act, 45 U.S.C. 152 Seventh and 156, are reproduced in Appendix C to the petition (Pet. App. 17a). Relevant portions of Section 3 of the Act, 45 U.S.C. 153, are reproduced in the Appendix, *infra*.

STATEMENT OF THE CASE

1. *What the Railroad Did.* On April 6, 1979, the Boston & Maine Corporation ("the Railroad") withdrew the crew dispatchers from its Mechanicville, New York, terminal. (Pet. App. 1a-2a.) The dispatchers are represented by the Brotherhood of Railway, Airline, and Steamship Clerks, who agreed to the withdrawal. (*Id.* 2a n.1.) The petitioner United Transportation Union ("the Union") objected to the withdrawal of the dispatchers on the ground that the Railroad's action was not permitted by the relevant Union-Railroad bargaining agreements.

Before their withdrawal, the dispatchers at Mechanicville had maintained a "spare board"—*i.e.*, a list of job openings for irregular work arising when regular crew members are absent or on days off—and a list of employees in line for such openings. When a job became available, the employee first in line on the spare board was called for work by the crew dispatcher. (*Id.* 2a-3a.) The spare board at the Mechanicville facility was not publicly posted (Tr. 38)[1] but employees who wished to

[1] "Tr." refers to the transcript of the district court hearing, held February 29 and March 5, 1980, on the Union's motion for a preliminary injunction.

know either the number of openings on the board or how far their names were from the top of the list could obtain that information by telephoning the crew dispatcher or by looking at the spare board itself on the dispatcher's desk. (*Id.*)

Since the withdrawal of the dispatchers from the Mechanicville terminal, crew dispatchers at East Deerfield, Massachusetts, have maintained the Mechanicville area spare board and have given assignments to Mechanicville workmen. (Pet. App. 2a.) The Railroad has, however, installed a Rapifax telecopy machine in the Mechanicville terminal, which produces a facsimile of the spare board at East Deerfield three times daily, shortly before the beginning of each shift, and it has provided a place in the Mechanicville terminal where employees can come to determine their place on the board. (*Id.*) In addition, the Railroad has leased three WATS lines, which for the first time enabled workmen to reach their crew dispatchers by telephone, toll-free, from anywhere in New York or New England. (*Id.*) Hence employees can call in to East Deerfield from their homes without expense to obtain up-to-the-minute information concerning their place on the spare board and to obtain answers to any questions about the facsimile of the spare board available at the Mechanicville facility.

2. *The Agreements.* The Railroad and the Union have disagreed over whether the withdrawal of the dispatchers is permissible under the parties' collective bargaining agreements. There are two relevant provisions, the first dealing with crew dispatchers and the second with dispatching facilities. (Pet. App. 3a-4a.) The first was entered into in February 1959 and provides as follows:

> "[I]t is understood *Crew Dispatchers will not be withdrawn from any terminal* where employed as of the date of this letter *without consultation in advance with the General Chairman* [of the Union].

> This will not apply to changes in or discontinuance of individual assignments." (Pet. App. 3a; emphasis added.)

This agreement thus dealt expressly with "withdrawal" of crew dispatchers from a terminal and imposed on the Railroad only the obligation of consulting the Union in advance of any such withdrawal.

Eleven years later, on November 24, 1970, the parties entered into an agreement regarding crew dispatching facilities which states:

> "For the future it is understood *crew dispatching facilities* will not be further merged *without prior approval* from [the union's General Committee on Adjustment], with the exception of the crew dispatching facilities at Rigby and Westboro, which can be merged at the Carrier's option with the present crew dispatching facilities at Mystic Junction.
>
> "In other words, the *crew dispatching facilities* on the Boston and Maine property would remain as separate facilities, as follows.
>
> Mechanicville
> East Deerfield
> Passenger Crew Dispatchers at Boston
> Mystic Junction Crew Dispatchers."
> (Pet. App. 3a-4a; emphasis added.)

The 1970 agreement differs from the 1959 agreement in two important respects: (1) it deals with the discontinuance of crew dispatching *facilities* rather than withdrawal of crew *dispatchers*, and (2) it requires Union approval before elimination of such facilities, as against mere consultation as required under the 1959 Agreement when the Railroad only withdraws crew dispatchers.

3. *The District Court Proceedings.* On November 30, 1979, the Union sued the Trustees of the Railroad in the United States District Court for the District of

Massachusetts seeking *inter alia* an order (1) declaring that the Railroad's withdrawal of crew dispatchers from Mechanicville violated §§ 2 Seventh and 6 of the Railway Labor Act, 45 U.S.C. §§ 152 Seventh and 156, by unilaterally effecting a change in working conditions prior to exhausting the conference and mediation procedures contemplated by that Act, and (2) enjoining the Railroad to restore working conditions at Mechanicville as they existed prior to April 6, 1979, pending exhaustion of those procedures.

At a hearing on the Union's motion for a preliminary injunction Union witnesses objected to the new arrangements in various respects, although the objections principally were to using the telephone. They claimed that the three-times-a-day posting at Mechanicville does not give employees up-to-the-minute information as to where they stand on the spare board, that that problem is aggravated by occasional malfunctions of, and illegibilities in copies produced by, the Rapifax machine, and that it is a nuisance to telephone a dispatcher at East Deerfield for a clarification on a toll-free WATS line. (Tr. 53-54, 64-65, 68.)

On March 5, 1980, the district court (Garrity, J.) ruled from the bench that it would grant a preliminary injunction because, in the court's view, the parties' dispute is a "major" dispute requiring handling under § 6 of the Act.[2] That conclusion was based squarely upon

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[2] As we explain more fully below, "major" disputes are disputes over proposed changes in collective bargaining agreements, and are resolved according to mediation and consultation procedures set forth in the Railway Labor Act. "Minor" disputes, on the other hand, are disputes over the interpretation or application of existing agreements, and fall within the exclusive jurisdiction of Adjustment Boards under § 3 of the Railway Labor Act. See *Elgin, Joliet & Eastern Ry.* v. *Burley*, 325 U.S. 711, 723-24 (1945); *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561, 566-67 (1946).

what the court described as its "interpretation of the critical documents"—*i.e.*, the agreements of February 11, 1959 and November 24, 1970. (Tr. 3/5/80 p. 2.)

The Railroad requested reconsideration on the ground that the court's ruling did not take into account, and was contrary to, the governing legal standard as enunciated by the First Circuit in *Airline Stewards & Stewardesses Ass'n, Local 550* v. *Caribbean Atlantic Airlines, Inc.*, 412 F.2d 289 (1st Cir. 1969). *Airline Stewards* held that, in "deciding whether to assume jurisdiction to grant injunctive relief" where a union claims that the railroad has made a unilateral change in working conditions while the railroad claims that its actions are allowed by existing agreements, "the [district] court's task is not to interpret the contract," but "to determine whether the contractual defense is frivolous." 412 F.2d at 291.

The district court denied the Railroad's motion in an opinion dated October 17, 1980 (Pet. App. 9a-15a), addressing the *Airline Stewards* standard for the first time and holding that the Railroad's contractual defense was "so obviously insubstantial as to be an attempt to circumvent § 6 of the Railway Labor Act."[3] (*Id.* 15a.)

4. *The Court of Appeals' Ruling.* The court of appeals reversed, reasoning (Pet. App. 6a):

> "The railroad contended that whereas the 1959 agreement spoke in terms of withdrawal of 'Crew

[3] The Railroad also requested an alternative remedy to restoring crew dispatchers to Mechanicville, *i.e.*, that it be permitted to transmit on a video screen, in electronic characters, and on a continuous basis, the spare board maintained at East Deerfield. That remedy would eliminate any problems of legibility found to exist with the Rapifax machine and would provide an up-to-the-minute copy of the spare board to the workmen at Mechanicville at a fraction of the cost of restoring and maintaining crew dispatchers there. The court rejected the Railroad's request without considering whether that alternative would adequately protect the interests of the Mechanicville employees pending entry of a final judgment.

> Dispatchers' while the 1970 agreement referred to the merger of 'crew dispatching facilities' * * * the difference in terms signified a difference in meaning. The [district] court's response, in part, relied on its conclusion that the 1959 agreement's provision for 'consultation' (only) [over the withdrawal of dispatchers] was of no value to the union. This, however, was a provision that was bargained for; it was not for the [district] court to assume expertise and declare it worthless."

The court of appeals itself did not "assume expertise" to interpret the parties' collective bargaining agreements. Rather, it held simply that

> "it [is] at least arguable that the 1970 substitution of 'facilities' for 'dispatchers' was a liberalization in return for the union's receiving a right of approval rather than, as under the 1959 agreement, of consultation, only, prior to any merger." (Pet. App. 6a.)

Accordingly, the court concluded that "there may be a violation of the contract, but this is a question of interpretation, and as such is outside of our jurisdiction" under the rule laid down in the *Airlines Stewards* case, *supra*. (Pet. App. 8a.) It therefore remanded with instructions to vacate the preliminary injunction.[4]

REASONS FOR DENYING THE WRIT

Throughout these proceedings the parties have agreed on the governing legal standard—that Adjustment Boards have exclusive jurisdiction if the Railroad's claim that its action is justified by the contract is "arguable" or

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[4] On June 8, 1981, the district court granted the Railroad's unopposed motion to dismiss for lack of jurisdiction. On June 9 the Union moved for reinstatement of the judgment. On July 10 the district court denied that motion. On July 21 the Union requested reconsideration of the denial. As of this writing the district court had not acted on that request.

not "frivolous." That standard is the one applied by the ten Circuit Courts of Appeals to have addressed the issue. The case thus involves only the application of settled law to particular facts, raising no issue of general importance warranting review by this Court.

In any event, as we show below, the court of appeals correctly applied the governing legal standard in this case. We also show that the claimed conflict with the Sixth Circuit (Pet. 8-9) is illusory: that Circuit adheres to the accepted standard and simply ruled against the railroad in a case involving a different contract.

A. The Law Is Settled and the Parties Agree That the Test for Distinguishing a "Major" From a "Minor" Dispute Is Whether the Railroad's Contractual Defense Is Frivolous.

The Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, distinguishes between so-called "minor" and "major" disputes. "Minor" disputes are disputes over the application or interpretation of pre-existing agreements and obligations.[5] Section 3 of the Act provides for compulsory arbitration of such minor disputes by Adjustment Boards, whose jurisdiction is exclusive:[6] the courts, accordingly, lack jurisdiction to decide disputes over the meaning or application of collective bargaining agreements.[7]

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[5] *Norfolk & Portsmouth Belt Line R.R.* v. *Brotherhood of Railroad Trainmen*, 248 F.2d 34, 40 (4th Cir. 1957), *cert. denied*, 355 U.S. 914 (1958); see *Elgin, Joliet & Eastern Ry.* v. *Burley*, 325 U.S. 711, 723-24 (1945).

[6] 45 U.S.C. § 153; *Brotherhood of R.R. Trainmen* v. *Chicago River & Indiana R.R.*, 353 U.S. 30, 34-35 (1957).

[7] *E.g.*, *Union Pac. R.R.* v. *Sheehan*, 439 U.S. 89, 94 (1978) ("Congress considered it essential to keep these so-called 'minor' disputes within the Adjustment Boards and out of the courts."); *Order of Ry. Conductors* v. *Pitney*, 326 U.S. 561, 566-67 (1946); *De La Rosa Sanchez* v. *Eastern Airlines, Inc.*, 574 F.2d 29, 32 (1st

Nothing in the Act limits the freedom of carriers to act in accordance with their own interpretation of relevant agreements prior to action by the Adjustment Board.

"Major" disputes, on the other hand, relate to "the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy." *Elgin, Joliet & Eastern Railway* v. *Burley, supra,* at 723. The Railway Labor Act does not allow a party to compel submission of a major dispute to arbitration. It does, however, provide a detailed framework of procedures to facilitate voluntary settlement of major disputes.[8]

Although in principle the distinction between "major" and "minor" disputes is clear, a difficulty arises when, as in this case, a railroad claims that its actions are in accordance with existing agreements and that any con-

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Cir. 1978) ("No federal or state court has jurisdiction over the merits of any employment dispute subject to determination by a system board of adjustment.").

[8] As stated by this Court in *Brotherhood of R.R. Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 378 (1969):

> "The parties must confer, § 2 Second, and if conference fails to resolve the dispute, either or both may invoke the services of the National Mediation Board, which may also proffer its services *sua sponte* if it finds a labor emergency to exist. § 5 First. If mediation fails, the Board must endeavor to induce the parties to submit the controversy to binding arbitration, which can take place, however, only if both consent. §§ 5 First, 7. If arbitration is rejected and the dispute threatens 'substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President,' who may create an emergency board to investigate and report on the dispute. § 10. While the dispute is working its way through these stages, neither party may unilaterally alter the *status quo*. §§ 2 Seventh, 5 First, 6, 10."

tention by the union to the contrary gives rise to a "minor" dispute over the meaning of an existing agreement, while the union accuses the railroad of attempting to impose unilaterally a new working condition that changes the existing agreement, in violation of the major dispute status quo requirements. In these circumstances there is a nearly overwhelming presumption in favor of Adjustment Board jurisdiction. As the Court of Appeals for the Sixth Circuit noted,

> "[c]onfronted by such opposing characterization of particular disputes, *the courts of appeals have consistently ruled that if the disputed action of one of the parties can 'arguably' be justified by the existing agreement* or, in somewhat different statement, if the contention that the labor contract sanctions the disputed action is not 'obviously insubstantial,' *the controversy is within the exclusive province of the National Railroad Adjustment Board.*" *United Transp. Union* v. *Baker*, 482 F.2d 228, 230 (6th Cir. 1973) (emphasis added).

All of the other Circuits (save the 10th, which to our knowledge has not yet addressed the issue) follow essentially the same standard.[9]

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[9] *Airline Stewards & Stewardesses Ass'n, Local 550* v. *Caribbean Atlantic Airlines, Inc.*, 412 F.2d 289, 291 (1st Cir. 1969) (exclusive Adjustment Board if railroad's contractual defense is not "obviously insubstantial" or "frivolous"); *Rutland Ry.* v. *Brotherhood of Locomotive Engineers*, 307 F.2d 21 (2d Cir. 1962); (same, if the agreement, reasonably interpreted, may recognize implicitly the railroad's position); *United Transp. Union* v. *Penn Central Transp. Co.*, 505 F.2d 542, 544 (3d Cir. 1974) (not "obviously insubstantial" test); *Norfolk & Portsmouth Belt Line R.R.* v. *Brotherhood of Railroad Trainmen*, 248 F.2d 34, 43-44 n.4 (4th Cir. 1957) (carrier's position not founded on "such insubstantial grounds" as to indicate effort to circumvent the major dispute resolving procedures of § 6); *St. Louis Southwestern Ry.* v. *United Transp. Union*, 646 F.2d 230, 233 (5th Cir. 1981) (carrier's position is "arguable"); *United Transp. Union* v. *Baker*, 499 F.2d 727, 730 (7th Cir. 1974) (not "frivolous" test); *United Transp. Union*

Up to this point the parties agree. They differ only over whether, considering the particular action taken by the Railroad and the relevant contract provisions, the court of appeals correctly held that the Railroad has an arguable, nonfrivolous contractual defense. There is no reason for this Court to review that essentially factual issue.

In any event, we now show that the court of appeals' decision was indeed correct.

B. The Railroad's Interpretation of the Contract Is Not "Frivolous."

The issue is whether the facility that continues to exist at Mechanicville can be called a "dispatching facility" within the meaning of the 1970 agreement, which prohibits merger of such "facilities" without union approval but is silent as to withdrawal of dispatchers (the subject addressed in the 1959 agreement). The Railroad's position that a "dispatching facility" continues to exist at Mechanicville is consistent with the language of the 1970 agreement and draws strength from the fact that, as the 1959 agreement demonstrated, when the parties wished to regulate removal of crew *dispatchers* from a facility, they knew how to say so in unequivocal language. Moreover, from the viewpoint of the employees whose interests are protected by the agreement, the physical location of crew dispatchers themselves is not an essential aspect of a "crew dispatching facility." What matters, as both the district court and the court of appeals properly recognized (Pet. App. 16a, 7a), is the employees' basic interest in ready access to accurate in-

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v. *Burlington Northern, Inc.*, 458 F.2d 354, 357 (8th Cir. 1972) ("reasonably susceptible" or "arguable" test); *Southern Pac. Transp. Co.* v. *United Transp. Union*, 491 F.2d 830, 832 (9th Cir. 1974) ("reasonably susceptible" test); *International Bhd. of Elec. Wkrs.* v. *Washington Term. Co.*, 473 F.2d 1156, 1173 (D.C. Cir. 1972) (same).

formation; not whether they receive assignments from crew dispatchers who happen to be located in Mechanicville.

In its March 5, 1980 Bench Statement the district court acknowledged that the question between the parties involves *interpretation* of contractual language. (See p. 6, *supra*.) But, as the court of appeals correctly held, that task falls within the exclusive province of the Adjustment Board. The expertise of that Board is especially important here, where there appears to be disagreement concerning the adequacy of the Rapifax equipment, as supplemented by the toll-free telephone lines leased by the Railroad, to assure communication between crew dispatchers and employees.

Indeed, the district court's reliance on asserted inadequacies in the Rapifax equipment (Pet. App. 14a-15a) plainly assumes that replacement of crew dispatchers with electronic equipment that the court found adequate *would* be consistent with maintenance of a "crew-dispatching facility." That view—that interpretation of the contract turns on the adequacy of the communication facilities installed at Mechanicville—simply highlights the fact that the matter is far more appropriate for the expert Adjustment Board to decide.

The district court's statement that the Railroad's interpretation of the contract was "an attempt to circumvent the Section 6 procedures" (Pet. App. 16a) is completely without foundation. The § 6 notice earlier served by the Railroad proposed the total abrogation of the 1970 agreement. As the court of appeals correctly held (Pet. App. 8a), that proposal obviously does not tell us whether any particular action by the Railroad is allowable under the agreement as it now stands.[10]

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[10] Moreover, the district court's statement reflected a mistake of fact, in that the court erroneously believed that the Railroad, after

In short, the Railroad's view—that there is a "dispatching facility" at Mechanicville within the meaning of the 1970 agreement because the company has maintained a location in the terminal where its employees can view a telecopy of the spare board at all times and talk by telephone to the crew dispatchers—is at least arguable. The court of appeals was accordingly correct in holding that the Adjustment Board has exclusive jurisdiction in this case.[11]

C. There Is No Conflict With the Sixth Circuit.

Petitioners are incorrect in claiming a conflict with the Sixth Circuit (Pet. 5-9). In *United Transp. Union* v. *Penn Central Co.*, 443 F.2d 131 (6th Cir.), *cert. denied*, 404 U.S. 938 (1971), the court held that the substitution by the railroad of computer print-outs for a mechanical, pegboard device violated a collective bargaining agreement requiring that "[c]rew boards showing the order in which crews are to go out will be main-

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having initiated the major dispute procedures by serving a § 6 notice proposing the abolition of the 1970 agreement, then "withdrew [the § 6 notice] on August 27, 1979, after it had unilaterally effected the merger of the Mechanicville and East Deerfield facilities on April 6." *Id.* In fact the Railroad's § 6 notice was not withdrawn and was later submitted to arbitration under the aegis of the National Mediation Board. Building on the mistaken premise that it *was* withdrawn, however, the district court seems to have reasoned (a) that the basic purpose of the § 6 notice was to achieve consolidation of the Mechanicville and East Deerfield dispatching facilities, (b) that the Railroad's action of April 6, 1979, made it unnecessary to pursue § 6 procedures further, and (c) that the Railroad's contract interpretation therefore represents only "an attempt to circumvent" § 6 procedures. That entire chain of reasoning, however, rests on a false premise. (The court of appeals did not resolve this issue, see Pet. App. 8a n.4.)

[11] It should be clear that the Railroad does not seek to deny the Union a forum in which to present its claim: our position is simply that a federal court is the wrong forum to resolve issues committed by Congress to Adjustment Boards.

tained." 443 F.2d at 132. That agreement is different from the agreement in this case in both wording and history, and the Sixth Circuit's decision that a major dispute existed on the facts of that case does not conflict with the decision of the First Circuit in this case that the facts here give rise only to a minor dispute. Moreover, even if it could be assumed that the Sixth Circuit in that case applied a different legal rule than that applied below, in a subsequent decision the Sixth Circuit plainly demonstrated that it is squarely in line with the First Circuit and the other Circuits in following the settled rule. See *United Transp. Union* v. *Baker*, *supra*, p. 10 (adopting the "arguable" or "obviously insubstantial" test).[12] There is, accordingly, no inter-circuit conflict for this Court to resolve.

D. The Union Is Not Entitled to an Injunction.

Since this case involves a minor dispute over which the district court has no jurisdiction, the court of appeals correctly directed that the preliminary injunction entered by the district court be vacated. The Union cites *Detroit & Toledo Shore Line Railroad* v. *United Transp. Union*, 396 U.S. 142 (1969), in support of its argument that it is entitled to an injunction to maintain the status quo, but the *Shore Line* case is inapplicable here. It held

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[12] In our view the allegedly conflict-creating decision of the Sixth Circuit in *United Transp. Union* v. *Penn Central Co.* was wrong. Our view is shared by the Seventh Circuit. In *United Transp. Union* v. *Baker*, 499 F.2d 727 (7th Cir. 1974), involving the identical factual situation (see *id.* at 731), that court said, "With all due respect and deference to our brethren in the Sixth Circuit, we think their decision misconceives the function of a federal court in the context of a major-minor dispute inquiry: the task is not to interpret the contract; rather, it is to determine whether the contractual defense is frivolous. *Airlines Stewards* [*supra*]." *Id.* at 731.

This Court denied certiorari in both the Sixth and Seventh Circuit cases. 404 U.S. 938 (1971), 419 U.S. 839 (1974).

that the status quo must be maintained while a *major* dispute is pending before the National Mediation Board. There was no claim in that case, let alone a determination, that the parties were engaged in a minor dispute within exclusive Adjustment Board jurisdiction.[18]

Nor is there any merit to the Union's alternative position that, if this case involves a minor dispute (which it does), an injunction should issue while minor dispute-resolving procedures are exhausted. *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana Railroad*, 353 U.S. 30 (1957), cited by the Union (Pet. 15), held only that a union cannot strike over a minor dispute pending before an Adjustment Board. A *Chicago River* injunction could not issue in this case for two reasons. First, the Union has not shown, and the lower courts have not found, that the Railroad's action will inflict irreparable injury on the Union and thereby defeat Adjustment Board jurisdiction. See *Brotherhood of Locomotive Engineers* v. *M-K-T R.R.*, 363 U.S. 528, 534 (1960). Second, the Union has not placed this dispute before the Adjustment Board, which is a prerequisite to a *Chicago River* injunction. *Manion* v. *Kansas City Terminal Railway*, 353 U.S. 927 (1957); *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R.R.*, 373

[18] *Shore Line* also does not support the Union's suggestion (Pet. 14) that, since the Railroad had served a § 6 notice seeking the abolition of any restriction on its ability to merge or otherwise deal with crew dispatching facilities, it was not permitted to make any change in those facilities pending the outcome of § 6 proceedings. *Shore Line* forbids a railroad, during the pendency of § 6 proceedings, from changing the status quo of working conditions to which an existing agreement does not speak. It does not forbid a railroad, simply because of the pendency of § 6 proceedings, from acting in accordance with an existing agreement. In short, nothing in *Shore Line* supports the notion that the Railroad's filing of a § 6 notice proposing the abolition of the existing agreement regarding dispatching facilities thereafter prohibited it from taking action that the existing agreement *allows*.

U.S. 33, 39-40 n.11 (1963); *United Transp. Union* v. *Penn Central Transp. Co.*, 505 F.2d 542, 545 (3d Cir. 1974); *International Ass'n. of Machinists and Aerospace Workers* v. *Northeast Airlines, Inc.*, 473 F.2d 549, 555 (1st Cir. 1972); *Southern Railway* v. *Locomotive Fire. & Eng.*, 384 F.2d 323, 327 (D.C. Cir. 1967).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

§ 153. National Railroad Adjustment Board—Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

First. There is established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after June 21, 1934, and it is provided . . .

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.